

REMARKS

This application has been reviewed in light of the Office Action mailed February 26, 2008. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 1 – 38 are pending in the application with Claims 1 – 17 and 34 – 38 having been previously elected for continued prosecution. Of the elected Claims, Claims 1 and 34 are in independent form. By the present amendment, Claim 34 has been amended, withdrawn Claims 18 – 33 have been canceled and Claims 39 and 40 are newly added.

Support for the features recited in newly added Claims 39 and 40 can be found throughout the specification. For example, features recited in Claim 39 find support on page 14, lines 4 – 21; and pages 20 – 21; features recited in Claim 40 find support on page 22, lines 1 – 24; and page 65, lines 1 – 18. Consequently, no new subject matter is introduced into the disclosure by way of the present amendment.

Initially, Applicants thank the Examiner for indicating that Claim 9 contains patentably distinct subject matter and thus would be allowable if rewritten in independent form including all the limitations recited in the base claim and any intervening claims. However, since the base claim is believed to be allowable on the merits, Claim 9 is believed to be allowable as currently presented.

I. Rejection of Claims 1, 4, 6, 13, 14 and 17 Under 35 U.S.C. § 102(e)

Claims 1, 4, 6, 13, 14 and 17 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent Publication No. 2003/0085994 to Fujita et al. (hereinafter, “Fujita”).

Fujita discloses that a pH sensor 113 for detecting pH is used as a medical examination means. However, Fujita fails to teach any collecting means such as Applicants’ claimed

specimen collection section for collecting a specimen at an examination site in a body cavity, as recited in independent Claim 1.

It is well-settled by the Courts that “[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company, et al., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir., 1984).

Therefore, as demonstrated above, because Fujita does not disclose each and every element recited in the present claims, Applicants respectfully submit that the rejection has been obviated. Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claims 1, 4, 6, 13, 14 and 17 under 35 U.S.C. § 102(e).

II. Rejection of Claims 34, 36 and 37 Under 35 U.S.C. § 102(e)

Claims 34, 36 and 37 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,695,885 issued to Schulman et al. (hereinafter, “Schulman”).

Schulman discloses an implantable device 100 that is implanted under a patient’s skin. (See: col. 4, lines 18 – 21; and FIG. 1 and 2). However, implanting an implant device, as taught in Schulman, does not anticipate Applicants’ step of temporarily introducing into a body cavity a plurality of in-vivo information acquisition apparatuses for acquiring in-vivo information in the body cavity, as recited in independent Claim 34.

Moreover, a device implanted under the surface of a patient’s skin does not anticipate introducing an apparatus into a body cavity, as understood in the art to which the present invention belongs.

Therefore, as demonstrated above, because Schulman does not disclose each and every element recited in the present claims, Applicants respectfully submit that the rejection has been

obviated. Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claims 1, 4, 6, 13, 14 and 17 under 35 U.S.C. § 102(e).

III. Rejection of Claims 2, 3, 5, 7, 8, 10 – 16, 35 and 38 Under 35 U.S.C. § 103(a)

Claims 2, 3, 5, 7, 8, 10 – 16, 35 and 38 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Fujita in view of any one or more of Schulman, Gazdzinski (U.S. Patent Pub. No. 2001/0051766), Alfano et al. (U.S. Patent No. 6,240,312), Nair et al. (U.S. Patent Pub. No. 2002/0132226) and Schentag et al. (U.S. Patent No. 5,279,607).

However, since Fujita and the present invention are commonly assigned to Olympus Corporation, Fujita is not available as a prior art reference under a 35 U.S.C. § 103(a) rejection, in accordance with the provisions of 35 U.S.C. § 103(c).

Specifically, 35 U.S.C. § 103(c) disqualifies a reference as prior art under § 103(a) if the reference qualifies as prior art under § 102(e), (f) or (g) and the reference and the claimed invention were owned by the same person or subject to an obligation of assignment to the same person (or same organization) at the time the invention was made.

Without Fujita, the cited references fail to disclose all of the features recited in the claims. Therefore, Claims 2, 3, 5, 7, 8, 10 – 16, 35 and 38 are believed to be allowable over the cited prior art references. Accordingly Applicants respectfully request withdrawal of the rejection with respect to Claims 2, 3, 5, 7, 8, 10 – 16, 35 and 38 under 35 U.S.C. § 103(a).

CONCLUSIONS

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1 – 17 and 34 – 40 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,



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